

Attachment 2

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of the Petition
of Intrado Communications Inc. for Arbitration
Pursuant to Section 252(b) of the Communications Act
of 1934, as amended, and Section 364.162, Florida
Statutes, to Establish an Interconnection Agreement with
Embarq Florida, Inc.

Docket No. 070699-TP
Filed: December 18, 2008

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MOTION FOR RECONSIDERATION

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Intrado Communications Inc. (“Intrado Comm”), pursuant to Rule 25-22.060, Florida Administrative Code, requests that the Public Service Commission (“Commission”) reconsider its Order No. PSC-08-0799-FOF-TP, issued December 3, 2008 (“Order”). It is respectfully submitted that the Commission has overlooked, misunderstood, and inaccurately interpreted the governing federal law and the relevant facts on the threshold legal issue that the Order decides — whether Intrado Comm’s 911/E911 service constitutes a “telephone exchange service” within the meaning of 47 U.S.C. § 153(47). Moreover, the Commission has failed to consider Intrado Comm’s separate request that the Commission exercise its exclusive jurisdiction to arbitrate this matter under sections 364.16, 364.161, and 364.162, Florida Statutes.

The Commission properly concluded in the Order that the safe and effective provision of 911/E911 service is a paramount concern “because of the potential impact on the health

and safety of Florida citizens.”¹ Indeed, the Commission correctly recognized that these services are “essential” and that the Commission has been charged with “protecting the public health, safety and welfare and must ensure access to basic local service, which includes access to 911/E911 service.”² But the Commission has overlooked facts and governing law and therefore taken action inconsistent with the Commission’s obligations and governing law that may deprive the public of the highest quality, competitive 911/E911 services.

Not only does the Order entirely overlook Intrado Comm’s request for arbitration under Florida law and half of the relevant definition of telephone exchange services, 47 U.S.C. § 153(47)(A), but it also runs afoul of FCC precedent interpreting the law it did consider, section 153(47)(B). Although the FCC’s interpretation of 153(47) recognizes that definitions must be viewed in light of the pressing needs of a rapidly changing society, the Commission has created an arcane definitional barrier that prevented it from coming to grips with the reality of what needs to be done to provide safe and effective 911/E911 services.

The Commission also overlooked and misunderstood several critical facts. No record basis exists for the Commission’s conclusion that Intrado Comm’s service cannot originate a call. And in fact, testimony by Intrado Comm witness Carey Spence-Lenss demonstrates that Intrado Comm’s service *can* originate calls. Intrado Comm also presented evidence that Intrado Comm’s 911/E911 service is superior to services currently available on the market. In other words, Intrado Comm’s service will better serve the public interests the Commission

¹ Order at 7.

² *Id.*

must protect than the services Florida citizens are receiving now. The Commission's misunderstanding of this evidence led it to an erroneous decision.

Moreover, one new and important fact has emerged since the Commission's decision: Intrado Comm has entered into three contracts with public safety answering point ("PSAP") customers to provide 911/E911 services in Florida — services Intrado Comm can begin to provide immediately if the Commission arbitrates the parties' disputes under section 251(c) and Florida law.³ While Intrado Comm has made clear that it cannot provide its 911/E911 service to these customers or any other customers absent a section 251(c) interconnection agreement, the Commission's Order incorrectly implied that Intrado Comm has the ability to offer the services it wants without a § 251(c) interconnection agreement.⁴

Intrado Comm is poised to offer consumers a choice to receive 911/E911 services that are more effective than those currently in the market. The Commission's wooden, incorrect understanding of section 153(47) — not to mention its failure even to consider the request that it exercise its compulsory arbitration power under Florida law — deprives Florida citizens of the right to receive the 911 protection that 21st Century technology can provide.

³ See Docket No. 961153-TL, *In Re: Petition for Numbering Plan Area Relief for 904 Area Code*, by *BellSouth Telecommunications, Inc.*, Order No. PSC-97-0637-FOF-TL at 7 (Fla. P.S.C. 1997) (granting motion for reconsideration based on new and "substantial pertinent information that was not in the record originally").

⁴ See, e.g., Order at 8 (denying Intrado Comm's request for a section 251(c) interconnection agreement and concluding that "the parties may negotiate a commercial agreement pursuant to § 251(a)").

ANALYSIS

The Commission should grant Intrado Comm's motion for reconsideration if "the motion identifies a point of fact or law which was overlooked or [if] the Commission failed to consider [such a point of fact or law] in rendering its decision."⁵

I. The Commission Erred in Concluding that Intrado Comm's Service is Not a Telephone Exchange Service Under Section 153(47)

The Commission's decision is premised on its conclusion that Intrado Comm is not entitled to compulsory arbitration under 47 U.S.C. § 251(c) because it will not provide a "telephone exchange service." The Commission failed to consider crucial aspects of the applicable law, including aspects of the definition itself. Congress defined "telephone exchange service" in two alternative ways:

The term "telephone exchange service" means (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, *or* (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.⁶

Thus, a telephone exchange service under Part (A) of the definition must (1) furnish subscribers intercommunicating service; (2) be within a telephone exchange or within a connected system of telephone exchanges within the same exchange area; and (3) be covered

⁵ *Stewart Bonded Warehouse v. Bevis*, 294 So.2d 315 (Fla. 1974); *Diamond Cab Co. v. King*, 146 So.2d 889 (Fla. 1962); *Pingree v. Quaintance*, 394 So.2d 161 (Fla. 1st DCA 1981).

⁶ 47 U.S.C. § 153(47) (emphasis added).

by an exchange service charge.⁷ In the alternative, a telephone exchange service under Part (B) of the definition must (1) be a comparable service provided through a system of switches, transmission equipment, or other facilities (or a combination thereof); (2) originate and terminate a telecommunications service; and (3) provide subscribers the ability to intercommunicate.⁸

The Commission held that Intrado Comm does not provide a telephone exchange service under section 153(47) because the service cannot originate calls. The Commission both misconstrued section 153(47)(B) and altogether failed to consider the definition of telephone exchange service under section 153(47)(A). While Intrado's competitive 911/E911 service to PSAPs must satisfy only one of these definitions, it in fact satisfies both.

A. Intrado Comm's 911/E911 Service Satisfies Each Prong of Section 153(47)(B)

Embarq did not dispute — because it cannot legitimately dispute — that Intrado Comm's service will provide subscribers the ability to intercommunicate and will be a comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof). The Commission restricted its analysis of section 153(47)(B) to whether Intrado Comm's service can originate and terminate a telecommunications service. The Commission's Order held that Intrado Comm's service is incapable of originating calls and is therefore not a telephone exchange service. This conclusion rests on a single, yet wholly irrelevant (and misinterpreted) fact: that Intrado

⁷ 47 U.S.C. § 153(47)(A).

⁸ 47 U.S.C. § 153(47)(B). *See also Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 15 FCC Rcd 385, ¶ 30 (1999) ("Advanced Services Order") (finding "intercommunication" is required under Part (B) even though the language of the Act does not state it).

Comm's service does not offer a PSAP the ability to call back a 911/E911 user, which means that a new outbound call cannot be placed unless a separate administrative local line is used. The Commission overlooked the fact that a PSAP may receive a 911 call and may then "hookflash" to obtain a dial tone and originate a bridged call to a third-party and then bridge the originating caller to the third party.

While Intrado Comm's advanced technology may not work exactly like Embarq's less effective 911/E911 service, this is no reason to deny Florida residents the benefits of 21st Century advances in technology. As the FCC has recognized, "[i]n this era of converging technologies, limiting the telephone exchange service definition to voice-based communications would undermine a central goal of the 1996 Act."⁹ With this expansive view of section 153(47) at hand, the FCC has blazed new paths recognizing that certain advanced DSL-based services and electronic directory information services fall within the definition of telephone exchange services — even though they might not meet a more wooden understanding of that term. For example, in the so-called *DA Call Completion Order*,¹⁰ the

⁹ *Advanced Services Order* ¶ 21. See also California Decision No. 01-09-048, *Petition of SCC Communications Corp. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with SBC Communications Inc.*, Opinion Affirming Final Arbitrator's Report and Approving Interconnection Agreement at 10 (C.P.U.C. Sept. 20, 2001) ("*California SCC Order*") ("[W]hile SCC [provides] . . . only one portion of what constitutes local exchange service, namely 9-1-1 calls, the fact that it does not provide all the services normally thought of as local exchange does not mean that it is not providing a telecommunications service.").

Even Florida law requires the Commission to "[r]ecognize the continuing emergence of a competitive telecommunications environment through the *flexible* regulatory treatment of competitive telecommunications services" FLA. STAT. ANN. § 364.01 (emphasis added). Florida law also requires the Commission to "[e]ncourage competition through *flexible* regulatory treatment among providers of telecommunications services in order to ensure the availability of the widest possible range of consumer choice in the provision of all telecommunications services." *Id.* (emphasis added).

¹⁰ *Provision of Directory Listing Information under the Telecommunications Act of 1934, as Amended*, 16 FCC Rcd 2736, ¶¶ 20-21 (2001) ("*DA Call Completion Order*").

FCC determined that directory assistance providers that offered call-completion services were providing a telephone exchange service under section 153(47). The services allowed callers in need of directory assistance to call the provider, which would then redirect the call to its intended destination.¹¹ According to the FCC, the service would not originate a call in the “form of an ordinary telephone call (*i.e.*, one initiated by LEC provision of dial tone)”¹² Thus, the FCC could have stated or implied that a service does not originate a call by directing an incoming call to a third party through “hookflash” technologies or any other similar mechanism. It could have also reasoned that Congress enacted an inflexible definition of 153(47) that refuses to respond to the realities of the ever-changing telecommunications industry. But it didn’t. The FCC held that the call-completion service allows a “local caller to connect to another local telephone subscriber and, in that process, through a system of either owned or resold switches, enables the caller to originate and terminate a call.”¹³ It was irrelevant that the originated call did not start with an ordinary telephone call.¹⁴ The same should be said of the fact that Intrado Comm does not originate calls in the form of an ordinary telephone call.

Moreover, the Commission’s description of Intrado Comm’s 911/E911 service overlooks key facts about the nature of the service itself. Intrado Comm’s network is not one-way.¹⁵ Intrado Comm’s service permits two-way communications between a PSAP and

¹¹ *Id.* at ¶¶ 18-20.

¹² *Id.* at ¶ 21.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Tr. at 154, lines 6-20 (Spence-Lenss Rebuttal).

another PSAP or between a PSAP and a 911 caller.¹⁶ Intrado Comm’s PSAP customers will be able to reach Embarq’s PSAP customers. And critically, as noted above, Intrado Comm’s PSAP customers can originate a call when they allow the 911 caller to connect to its requested party, the emergency first responders.¹⁷ In this process, the central office serving as the 911 selective router originates a new call upon the request of the PSAP to transfer a 911 call. The central office originates a call and bridges the original 911 caller with the receiving party of the newly established conference call. The PSAP that originated the call can then either disconnect and leave the call intact or remain on the line and participate in the discussion.

Not only are these facts and conclusions consistent with the FCC’s interpretation of section 153(47)(B) — an interpretation that binds this Commission — but they are consistent with the *California SCC Order*’s ruling that a competitor’s 911/E911 routing services constituted a telephone exchange service.¹⁸ In *California SCC Order*, Intrado Comm (then SCC Communications) sought to enter a § 251(c) interconnection agreement to provide a 911/E911 service. Intrado Comm’s service allowed its carrier customers to originate 911 calls for their end-users by carrying the traffic from the origination point for termination at the PSAP.¹⁹ Intrado Comm did not provide a dial tone.²⁰ Nor did it assign NPA NXX’s.²¹ Thus, the incumbent in *California SCC Order* argued that “[Intrado] is a ‘go between’ entity that

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *California SCC Order* at 9.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

simply aggregates 9-1-1 calls from other service providers and delivers them to Pacific's 9-1-1 Selective Routing Tandem."²² Despite the clear differences between Intrado Comm's service and "traditional dial-up telephone services," the commission rejected the incumbent's argument: Intrado Comm's service could originate a telecommunications service.²³ Other State commissions that considered this issue reached the same conclusion.²⁴

The adverse consequences to public safety of the Commission's error in overlooking or misapprehending the testimony and law as to origination are made clear by other testimony that it also overlooked. Hicks provided crucial testimony about the unparalleled benefits of Intrado Comm's 911/E911 service: Intrado Comm's network will "provide[] PSAPs a migration path to next generation technology and services that will provide public safety with more comprehensive and robust call transfer capabilities than that currently afforded by the legacy 911 environment."²⁵ As Hicks further explained,

Embarq's reliance on four (4) separate 911 selective routers in Florida without full interoperability between them limits the capability of PSAPs to provide statewide support for backup, overflow or disaster recovery situations caused by major catastrophes or call center evacuation events. In addition, PSAPs currently have limited ability to transfer calls with the caller's

²² *Id.*

²³ *California SCC Order* at 9-10.

²⁴ Docket No. 23378, *Petition of SCC Communications Corp. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with SBC Communications Inc.*, Order No. 8 Denying Motion to Dismiss (Jan. 4, 2002); ICC Docket No. 00-0769, *Petition of SCC Communications Corp. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with SBC Communications Inc.*, Arbitration Decision (I.C.C. Mar. 21, 2001).

²⁵ Tr. at 81 (Hicks Direct).

number and location information across and between all selective routing boundaries established by Embarq.²⁶

The FCC's *Advanced Services Order* made clear that the underlying function of the technology and the purpose of the Communications Act of 1934, as amended ("Act"),²⁷ serve as benchmarks when interpreting what it means to provide a telephone exchange service.²⁸ In other words, the meaning of words is not determined in a vacuum or by rigid adherence to formalisms long since abandoned. Hicks' testimony demonstrates that Intrado Comm's service bridges the gap between the inferior, antiquated telephone exchange services of the past and those of the future. It also demonstrates that Intrado Comm intends to provide a safe and accurate 911/E911 service to Florida citizens. Indeed, the testimony shows that if the Commission wants to make good on its obligation to protect Florida citizens, it should require that Embarq and Intrado Comm enter into a § 251(c) interconnection agreement so Intrado Comm can get its more effective service up and running.

The Commission overlooked this testimony. It overlooked the "potential unintended consequences" that its Order sought to avoid.²⁹ And it overlooked the fact that not only will Intrado Comm originate a call upon receiving a 911 call by obtaining a dial tone and then bridging the 911 caller to a third-party, but Intrado Comm's 911/E911 service falls precisely into the category of non-traditional telephone exchange services contemplated by the FCC's expansive interpretation of section 153(47).

²⁶ *Id.* at 80 (Hicks Direct).

²⁷ 47 U.S.C. § 151 *et seq.*

²⁸ *See Advanced Services Order* ¶ 21.

²⁹ *See Order* at 7.

Congress designed section 251(c) for situations like this one — where a company like Intrado Comm seeks to deliver competitive telecommunications services but is rebuffed by a powerful incumbent like Embarq. The policy supporting the applicability of section 251(c) is all the more important here given Congress’s directive that the FCC, as well as State commissions, oversee the deployment of 911 services.³⁰ The FCC’s rulings demonstrate that determining whether a particular service satisfies section 153(47) must be done with an eye to the overarching purpose of the Act.³¹ Embarq cannot legitimately dispute these principles. It instead generally responds to Intrado Comm’s application of these principles in a way summed up by testimony of Embarq witness Maples: “I don’t think the public interest could be taken into consideration where it would misapply or change a rule.”³² Embarq’s straw man argument ignores the facts at hand. Of course, the public interest cannot overcome the absolutely clear language of a statute when no question exists as to its meaning. But the FCC itself has interpreted 153(47)(B) to give effect to its overall statutory concerns and *nothing* in 153(47)(B) supports the conclusion that the meaning of “originate a call” was locked in and

³⁰ The FCC explained that “section 706 [(47 U.S.C. § 157 nt.)] . . . directs the Commission (and *state commissions* with jurisdiction over telecommunications services) to encourage the deployment of advanced telecommunications capability to all Americans by using measures that ‘promote competition in the local telecommunications market’ and removing ‘barriers to infrastructure investment.’” *911 Requirements for IP-Enabled Service Providers*, 20 FCC Rcd 10245, ¶ 31 (2005) (“*VoIP E911 Order*”) (emphasis added). It found that “uniform availability of E911 services may spur consumer demand” for broadband services, which accomplishes the goals of the Act. *Id.* These 911/E911 services play a “critical role” in achieving the Act’s goal of promoting safety of life and property because “‘improved public safety remains an important public health objective of Federal, State, and local governments and substantially facilitates interstate and foreign commerce.’” *Id.* ¶ 32 (citing 47 U.S.C. § 615(a)(3)).

³¹ See, e.g., *Advanced Services Order* ¶ 21.

³² Hearing Exhibit 7, Maples Deposition at p. 41.

keyed to the ways in which older technologies have operated. Indeed, the FCC has expressly rejected that interpretive approach.³³

Intrado Comm is ready to inject needed competition into a market for 911/E911 services that has long been dominated by incumbents like Embarq. Intrado Comm's service is safe and effective and can provide greater protection to Florida residents than the services currently being offered. But the draconian terms on which Embarq would offer interconnection will not provide Intrado Comm the interconnection it needs and, ultimately, will deny Florida citizens the protection they deserve. The language of 153(47) does not support the exclusion of Intrado Comm as one effective competitor, which is the result of the Commission's decision.

B. Intrado Comm's 911/E911 Service Satisfies Each Prong of Section 153(47)(A).

Intrado Comm's service constitutes a telephone exchange service if it meets either part A or B of section 153(47). Because, as demonstrated above, Intrado Comm's service satisfies section 153(47)(B), the Commission's analysis of this Petition could end here. If the Commission concludes otherwise, however, it must also consider section 153(47)(A), something it wholly failed to do. The Commission must consider whether Intrado Comm's service falls within the meaning of "telephone exchange service" under section 153(47)(A).³⁴ The Commission's failure to perform this analysis in its Order justifies granting

³³ *DA Call Completion Order* ¶ 21; *Advanced Services Order* ¶ 21.

³⁴ Intrado Comm raised the applicability of section 153(47) in its entirety in pages 9-13 of its post-hearing brief, where it argued that its service qualifies as a telephone exchange service.

reconsideration, because Intrado Comm’s service qualifies as a telephone exchange service under 153(47)(A).

1. Intercommunication

Again, Embarq did not dispute that Intrado Comm’s service will enable subscribers to intercommunicate. The FCC has stated that “a key component of telephone exchange service is ‘intercommunication’ among subscribers within a local exchange area.”³⁵ A service satisfies this requirement “as long as it provides customers with the capability of intercommunicating with other subscribers.”³⁶

Intrado Comm’s service fulfills this “key component” because it allows Florida consumers to be connected with PSAPs and communicate with local emergency personnel. In the FCC’s words, Intrado Comm’s service “permits a community of interconnected customers to make calls to one another”³⁷ — a community composed of 911 callers, PSAPs, and first responders located in the relevant geographic area.³⁸

2. Within a Telephone Exchange or Exchange Area

Intrado Comm’s service will be provided within a telephone exchange or exchange area. The concept of an exchange “is based on geography and regulation,” not exchange boundaries. Indeed, the FCC has ruled that the definition of telephone exchange “does not

³⁵ *Advanced Services Order* ¶ 30.

³⁶ *Id.* at ¶ 23.

³⁷ *See DA Call Completion Order* ¶ 17.

³⁸ *See VoIP E911 Order* ¶ 13 n.32 (“unlike normal phone calls, 911 calls are routed based on the calling number (which is linked to a particular geographic area and political jurisdiction), not the called number”).

require a specific geographic boundary.”³⁹ For this reason, the FCC has determined that wireless providers’ geographic service areas, which are different from typical wireline exchange area boundaries, are considered to be “within a telephone exchange” or “a connected system of telephone exchanges within the same exchange area” for purposes of the Act’s definition of telephone exchange service.⁴⁰ It is also for this reason that expanded area service and expanded local calling service have developed to ensure that all members of a “community of interest” can reach other subscribers without incurring a toll charge.⁴¹ All of this is to say that a telephone exchange service includes any “means of communicating information within a local area”⁴² that involves “a central switching complex which interconnects all subscribers within a geographic area.”⁴³

Intrado Comm’s 911/E911 service easily satisfies this definition. The service uses selective routers (*i.e.*, switches) to interconnect PSAPs and 911 callers located in the same geographic area. Thus, 911 callers and PSAPs in a so-called community of interest can reach each other regardless of the incumbents’ existing exchange boundaries.

³⁹ *Application of BellSouth Corp., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana*, 13 FCC Rcd 20599, ¶ 30 (1998) (“*BellSouth Louisiana II Order*”).

⁴⁰ *Id.*

⁴¹ *See generally Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service at Various Locations*, 12 FCC Rcd 10646 (1997).

⁴² *Advanced Services Order* ¶ 17.

⁴³ *BellSouth Louisiana II Order* ¶ 28.

Moreover, the FCC and at least one federal court have recognized that exchange boundaries do not apply to 911/E911 services.⁴⁴ In *Western Elec. Co.*, the district court specifically waived LATA restrictions to ensure that the Bell Operating Companies (BOCs) could “provide, using their own facilities, 911 emergency service across LATA boundaries to any 911 customer whose jurisdiction crosses a LATA boundary.”⁴⁵ This allowed “the BOCs to provide multiLATA 911 services, including E911 services.”⁴⁶ Similarly, in the *Forbearance Order*, the FCC recognized that selective routers often serve 911 callers and PSAPs in more than one LATA.⁴⁷ In other words, Intrado Comm’s service offering need not fall within Embarq’s exchange boundaries to be a telephone exchange service.

3. Exchange Service Charge

Finally, Intrado Comm’s service will be covered by an exchange service charge. The FCC explained in its *Advanced Services Order* that “any charges” assessed for the services at issue would be considered an “exchange service charge.”⁴⁸ Intrado Comm’s PSAP customers will be subject to an exchange service charge for their receipt of a telephone exchange service from Intrado Comm. Using the FCC’s words, an exchange service charge will cover the service because Intrado Comm’s customers will obtain “the ability to communicate within the

⁴⁴ *Bell Operating Companies: Petitions for Forbearance from the Application of Section 272 of the Communications Act of 1934, as amended, to Certain Activities*, 13 FCC Rcd 2627, ¶ 20 (1998) (“*Forbearance Order*”); *United States v. Western Elec. Co.*, Civil Action No. 82-0192, Misc. No. 82-0025 (PI), slip op. (D.D.C. Feb. 6, 1984).

⁴⁵ *Western Elec. Co.*, at 5 n.8.

⁴⁶ Letter from Constance E. Robinson, Chief, Communications and Finance Section, Antitrust Division, U.S. Department of Justice, to Alan F. Ciamporero, Pacific Telesis Group, I (Mar. 27, 1991).

⁴⁷ *Forbearance Order* ¶ 9.

⁴⁸ *Advanced Services Order* ¶ 27.

equivalent of an exchange area as a result of entering into a service and payment agreement with”⁴⁹ Intrado Comm.

Further, the FCC has stated that the “exchange service charge” element of section 153(47) “comes into play only for the purposes of distinguishing whether or not a service is local.”⁵⁰ The jurisdictional nature of 911/E911 service is not at issue here. Indeed, 911/E911 services to PSAPs are routinely included in intrastate tariffs⁵¹ and even this Commission has found all N11 services to be local services.⁵²

II. A Commercial Agreement Under Section 251(a) Will Not Provide Intrado Comm With the Necessary Terms of Interconnection

The Commission’s Order suggests that its refusal to grant Intrado Comm’s request for interconnection makes no difference. It explains that Intrado Comm is not entitled to a section 251(c) interconnection agreement and that the parties may instead negotiate a section 251(a) commercial agreement on their own.⁵³ No record basis exists for this conclusion. And in fact, the Commission overlooked Intrado Comm’s evidence that Intrado Comm cannot provide its 911/E911 services without a section 251(c) interconnection agreement.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *See, e.g.,* BellSouth Telecommunications, Inc. d/b/a AT&T Florida, General Subscriber Service Tariff, Section A24.1; Embarq Florida, Inc., General Exchange Tariff, Section A10.A.

⁵² Docket Nos. 920962-TL, 910049-TL, 920913-TL, Order No. PSC-93-1620-FOF-TL, at Section III.B (Nov. 4, 1993).

⁵³ Order at 8.

Congress enacted section 251 to topple the monopoly that incumbents had long held over the telecommunications industry and the associated marketplace.⁵⁴ Section 251 reflected Congress's understanding that the incumbent local exchange carriers had no incentive to enter into business arrangements with would-be competitors.⁵⁵ Thus, the goal of section 251(c) is to provide all competitors access to the public switched telephone network on equal terms, to equalize bargaining power, and to ensure that new entrants can compete with incumbent providers.⁵⁶ Indeed, the FCC specifically recognized that the commercial negotiation section of 251(a) would not be a feasible option given the incumbents' "lack of incentives and superior bargaining power."⁵⁷ Commercial negotiations would not provide competitors with the interconnection necessary for them to "compete directly with the [incumbent] for its customers and its control of the local market."⁵⁸

Intrado Comm's post-hearing brief and related testimony repeatedly made clear that Intrado Comm cannot provide its 911/E911 service absent a section 251(c) interconnection agreement:

Intrado Comm . . . cannot offer its innovative 911/E911 service offering to Florida PSAPs without first establishing mutually beneficial interconnection and interoperability arrangements with the ILECs who control access to the public switched telephone

⁵⁴ *Implementation of Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd 15499 ¶¶ 16, 18 (1996) ("Local Competition Order") (intervening history omitted), *aff'd*, *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999).

⁵⁵ *Id.* ¶ 10.

⁵⁶ S. Rep. No. 104-23, at 20 (1995).

⁵⁷ *Local Competition Order* ¶ 15.

⁵⁸ *Id.* ¶ 55.

network Section 251(c) of the Act provides the most suitable vehicle for ensuring that Intrado Comm obtains the interconnection and interoperability arrangements it needs to provide its 911/E911 services to Florida counties and PSAPs while, at the same time, promoting the reliability and redundancy critical to public safety.⁵⁹

Hicks' testimony supplied the necessary evidentiary predicate to support this conclusion:

As a CLEC, interconnection pursuant to Section 251(c) of the Communications Act of 1934, as amended ("Act"), is the only way to address the uneven bargaining power that exists between competitors and monopoly incumbents, such as Intrado Comm and Embarq. Embarq's insistence that the Parties seek a "commercial agreement" for some of the interconnection arrangements requested by Intrado Comm is another barrier to entry that Embarq is wielding to stall Intrado Comm's entry into the Florida market. The interconnection arrangements Intrado Comm needs to provide its PSAP customers service fall squarely within the category of arrangements eligible to be obtained from Embarq via the Section 251(c) process and for which that process was adopted and implemented.⁶⁰

Moreover, Hicks testified that Embarq has refused to provide Intrado Comm with interconnection that is at least equal in quality to that provided to itself, an affiliate, or other carriers:

Embarq has refused to permit Intrado Comm interconnection to its network that would permit Intrado Comm to enter the market and compete for PSAP consumers on a level playing field with Embarq. Embarq continues to believe that only Embarq can continue in its monopoly role of routing all of their end user 911 calls through its 911 selective routing system before delivering the calls to a competitive provider's 911 selective routing system for termination to PSAPs located within Embarq's franchise territory in Florida.⁶¹

⁵⁹ Intrado Comm Post-hearing brief at 2-3.

⁶⁰ Tr. 87-88 (Hicks Direct).

⁶¹ *Id.* at 91.

Indeed, Hicks explained that if Intrado Comm was left with no option but to interconnect with Embarq under a commercial agreement acceptable to Embarq, the result could threaten the public's safety:

Q Please explain why [Embarq's Interconnection Proposal] has a possible negative effect on public safety.

A The unnecessary switching of Embarq originating office traffic through the Embarq selective router introduces another potential point of failure in the 911 call path. Intrado Comm understands the preference of Embarq to use its 911 selective routing infrastructure to sort traffic from originating offices that may have subscribers served by differing 911 service providers, however using its 911 selective routing infrastructure to sort the calls and placing such calls on a single common trunk group creates numerous parity issues and presents operational risks for those Embarq subscribers served by another 911 selective router provider. In this situation, the competitive 911 service providers overall reliability and 911 integrity remains subject to the effectiveness and efficiency of the ILEC. Further, the manner in which the ILEC wishes to deliver its subscribers calls is inconsistent with the NENA recommendations relating to default routing principles. The use of a common transport trunk group for all originating office traffic makes it impossible for a PSAP served by Intrado Comm to determine the carrier's originating office. Today's 911 trunk configuration of a separate 911 trunk group for each originating office readily assists both Embarq and the PSAP in quickly troubleshooting 911 service problems. Intrado Comm would be disadvantaged where Embarq uses its 911 selective routing infrastructure to sort the 911 calls and place calls destined for Intrado Comm-served PSAPs on a single common trunk group.⁶²

The Commission overlooked this evidence in finding that all of the services Intrado Comm desires could have been obtained through a commercial agreement.⁶³ The

⁶² *Id.* at 92. *See also id.* at 95-96 (Hicks Direct) ("Deviating from a traditional POI arrangement in those instances when Intrado Comm is serving the PSAP[, as Embarq would demand,] results in the most efficient and effective network architecture and provides the highest degree of reliability for the provision of 911 services.").

⁶³ Order at 8.

Commission's conclusion is unsupported by the record. Intrado Comm does not dispute that it is permitted — as a legal matter — to negotiate an interconnection agreement under section 251(a). As Hicks made clear, however, that negotiation will not bear fruit. Meanwhile, the quality of 911 service will suffer.

III. The Commission Erred By Failing to Consider Intrado Comm's Request for Arbitration Under Florida Law

It is imperative that Florida citizens have the option to receive the safest and most effective 911/E911 services that technology can provide. Section 251(c) advances that goal by removing the high barriers that would prevent competitors from entering the market and squelch the race to rapidly develop and improve technologies. Promoting competition to provide increasingly better 911/E911 service is particularly important, because the public's health and welfare is at stake. Yet the Commission's interpretation of 153(47) is wooden, inconsistent with FCC rulings, and not required by the language of 153(47) itself. The Commission should reconsider its decision for these reasons alone.

But even if the Commission had not committed these errors, it still missed the opportunity — and its obligation — under Florida law to ensure that Florida citizens receive the benefits of a competitive 911/E911 services industry. Intrado Comm requested arbitration and interconnection under sections 364.161 and 364.162, Florida Statutes — a request that the Commission simply failed to consider.⁶⁴ The Commission's interpretation of section

⁶⁴ See generally Intrado Comm Petition for Arbitration, In the Matter of the Petition of Intrado Communications Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended, and Section 364.162, Florida Statutes, to Establish an Interconnection Agreement with Embarq Florida, Inc. (Nov. 27, 2007) (petitioning for arbitration under Florida law and setting forth the basis for Intrado Comm's request).

153(47)(B) provides no excuse, because no “origination” requirement exists under Florida law. For these independent reasons, the Commission should grant Intrado Comm’s motion for reconsideration.

A. Intrado Comm is Entitled to Interconnection Arbitration Under Florida Law

The Florida Legislature authorized local-exchange competition a year before Congress passed the Telecommunications Act of 1996. As part of this effort, the Legislature enacted sections 364.16, 364.161, and 364.162 to address interconnection and traffic exchange and to create an arbitration proceeding for parties unable to reach an interconnection agreement.

Section 364.16(3), Florida Statutes, establishes the fundamental right of a CLEC to interconnect and exchange traffic with an incumbent local exchange company:

Each local exchange telecommunications company shall provide access to, and interconnection with, its telecommunications facilities to any other provider of local exchange telecommunications services requesting such access and interconnection at nondiscriminatory prices, rates, terms, and conditions established by the procedures set forth in s. 364.162.

Section 364.161(1) builds upon these basic interconnection obligations. It requires the incumbent to negotiate an interconnection agreement. And more important, it requires this Commission to arbitrate disputes when the parties cannot reach an agreement on their own:

If the parties cannot reach a satisfactory resolution [of the competitor’s interconnection request] within 60 days, either party may petition the commission to arbitrate the dispute *and the commission shall make a determination within 120 days.*⁶⁵

⁶⁵ FLA. STAT. ANN. § 364.161(1) (emphasis added).

Finally, Section 364.162 creates the specific procedures that govern interconnection arbitration proceedings before the Commission and the rules regarding the rates, terms, and conditions the Commission can establish.

1. The Plain Language of Section 364.161 Requires the Commission to Arbitrate the Parties' Disputes

Section 364.161 sets forth the Commission's duty to arbitrate interconnection disputes:

Upon request, each local exchange telecommunications company shall unbundle all of its network features, functions, and capabilities, including access to signaling databases, systems and routing processes, and offer them to any other telecommunications provider requesting such features, functions or capabilities for resale to the extent technically and economically feasible. The parties shall negotiate the terms, conditions, and prices of any feasible unbundling request. If the parties cannot reach a satisfactory resolution within 60 days, either party may petition the commission to arbitrate the dispute and the commission shall make a determination within 120 days.

Thus, the Commission's duty to arbitrate is triggered if three stages have come to pass. First, a "local exchange telecommunications company" must have received a request to unbundle.⁶⁶ Section 364.02(8) defines a "local exchange telecommunications company" as "any company certificated by the commission to provide local exchange telecommunications services in this state on or before June 30, 1995." Moreover, Florida law casts a wide net over the services subject to interconnection: each ILEC is required to unbundle "all of its network features, functions, and capabilities, including access to signaling databases, systems and

⁶⁶ *Id.*

routing processes.”⁶⁷ Second, the unbundling request must be made by “any other telecommunications provider.”⁶⁸ Third, the parties must be unable to “reach a satisfactory resolution within 60 days, [and then] either party m[ust] petition the commission to arbitrate the dispute.”⁶⁹

The facts here are simple: Embarq cannot legitimately dispute that it is a “local exchange telecommunications company”; Intrado Comm’s interconnection request falls well within the scope of services subject to interconnection; Intrado Comm is “any other telecommunications provider” because it is certificated by this Commission as a competitive local exchange telecommunications company⁷⁰ and N11 services have long been recognized by this Commission as local services;⁷¹ and no one disputes that the parties were unable to satisfactorily resolve their disputes and enter into an interconnection agreement. Thus, Intrado Comm’s timely petition requesting arbitration under Florida law triggered the Commission’s unmitigated duty to arbitrate the parties’ disputes.

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ Testimony of Spence-Lenss, Exhibit 19 (“Intrado is certificated by this Commission as a competitive local exchange telecommunications carrier (“CLEC”), holding Certificate Number 7736.”) *See* FLA. STAT. ANN. § 364.02(5) (defining a “Competitive local exchange company” as “any company certificated by the commission to provide local exchange telecommunications services in this state on or after July 1, 1995”). Intrado Comm is also a provider of basic local telecommunications services because it provides access to emergency services such as 911. *See also* FLA. STAT. ANN. § 364.02(1) (defining “basic local telecommunications service”).

⁷¹ Docket Nos. 920962-TL, 910049-TL, 920913-TL, Order No. PSC-93-1620-FOF-TL, at Section III.B (Nov. 4, 1993).

2. The Commission's Own Decisions Demonstrate that It Must Arbitrate the Parties' Disputes

No more than a year after the Florida Legislature facilitated competitive entry into the local exchange market, the Commission was called upon to arbitrate several disputes under sections 364.161 and 364.162, Florida Statutes. And from the very beginning, the Commission has understood that it cannot escape its duty to arbitrate once that duty is properly triggered:

Section 364.161, Florida Statutes, provides that upon request, each local exchange telecommunications company shall unbundle all of its network features, functions, and capabilities, and offer them to any other telecommunications provider requesting them for resale to the extent technically and economically feasible. If the parties to the proceeding are unable to successfully negotiate the terms, conditions, and prices of any feasible unbundling request, the Commission, pursuant to Section 364.162(3), Florida Statutes, is *required* to set nondiscriminatory rates, terms, and conditions for resale of services and facilities within 120 days of receiving a petition.⁷²

While the Telecommunications Act of 1996 may have prompted an influx of arbitration requests relying on federal law, the Commission has consistently recognized its independent and continuing authority to require interconnection and traffic exchange under Florida law. For example, when Sprint Communications petitioned for arbitration with Verizon Florida Inc. under sections 251 and 252 of the Telecommunications Act of 1996, the Commission specifically found that it “is vested with jurisdiction in this matter pursuant to

⁷² Docket No. 950984-TP, Order No. PSC-96-0811-FOF-TP, at Section I (June 24, 1996) (emphasis added).

Section 252 of the Act, *as well as Sections 364.161 and 364.162, Florida Statutes*, to arbitrate interconnection agreements.”⁷³

Likewise, in its *Transit Order*,⁷⁴ the Commission again asserted its State law jurisdiction over an interconnection-related matter. BellSouth filed the tariff at issue to establish a default rate for transit traffic that would apply to other telecommunications carriers with which BellSouth did not have an interconnection agreement (mostly small ILECs).⁷⁵ (“Transit traffic is traffic that originates on the network of one carrier, transits over BellSouth’s network, and then terminates on the network of a third carrier.”)⁷⁶ After quoting section 364.16(1), which authorizes the Commission to require connections between local exchange companies when the connections can be made reasonably and efficiently, the Commission concluded that BellSouth’s transit service “is more characteristic of a local interconnection arrangement within the purview of Section 364.16(1).”⁷⁷ In addition, the Commission reasoned, “Section 364.16(2) read in conjunction with Section 364.162, Florida Statutes, provides this Commission with the authority to require carriers to interconnect directly or indirectly, as well as, ‘negotiate mutually acceptable prices, terms and

⁷³ Docket No. 010795-TP, Order No. PSC-03-0637-FOF-TP (May 27, 2003) (emphasis added).

⁷⁴ Docket Nos. 050119-TP and 050125-TP.

⁷⁵ Docket Nos. 050119-TP and 050125-TP, Order No. PSC-06-0776-FOF-TP, at Section 1 (September 18, 2006).

⁷⁶ *Id.*

⁷⁷ *Transit Order*, at Section II.B.3, *State Jurisdiction over Interconnection*.

conditions.”⁷⁸ Thus, the Commission not only invalidated BellSouth’s transit tariff, but it also required the parties to negotiate rates, terms, and conditions for their transit traffic.⁷⁹

Besides the Commission’s extraordinary decision to order parties without an agreement for transit services to negotiate an interconnection agreement to govern transit traffic, the *Transit Order* is particularly important here because it highlights a critical distinction between section 251(c) of the federal Act and Florida law: it is irrelevant under Florida law whether Intrado Comm’s service can originate a call. BellSouth, as a transit carrier, had no relationship with the originating and terminating callers. And as a transit carrier, BellSouth certainly could not itself originate or terminate a call. If the Commission has State-law authority to order negotiations involving a transit-services provider that neither originates nor terminates calls, and then arbitrate any disputes arising out of the failure to negotiate such an interconnection, then Intrado Comm’s services as a CLEC providing services to PSAPs must be subject to the provisions of Sections 361.16, 364.161, and 364.162. In other words, this Commission must grant Intrado Comm’s arbitration request under Florida law regardless of its interpretation of section 153(47) of the federal Act.

The Commission’s willingness to interpret sections 364.161 and 364.162 expansively has also carried over into its interpretation of section 364.16(2) — a section that is substantially similar to section 364.16(3), a relevant section here. In the *Neutral Tandem*

⁷⁸ *Id.*

⁷⁹ *Id.*

Order,⁸⁰ the Commission considered whether it had jurisdiction to arbitrate a dispute under section 364.16(2) relating to a CLEC to CLEC interconnection request. The Commission refused to dismiss the arbitration request and sustained its jurisdiction. In concluding that “Level 3 [Communications, LLC], as a CLEC, is required to provide interconnection with its telecommunications services to any other provider of local exchange telecommunications services requesting such interconnection,” the Commission noted its broad legislative mandate:

We note further that §364.01(2), Florida Statutes, provides that we have exclusive jurisdiction over all matters set forth in Chapter 364, Florida Statutes. Additionally, as noted by Neutral Tandem, the Florida Supreme Court held in Level 3 v. Jacobs [841 So.2d 447 (Fla. 2003)] that “[i]nterconnection is a fundamental duty of all local telecommunications providers in both Florida law and Federal Law.” Consequently, we find that if providers of local exchange telecommunications services are unable to reach mutually acceptable prices, terms, and conditions for interconnection, we may arbitrate the prices, terms, and conditions to ensure the requirements of §364.16(2), Florida Statutes, are met.⁸¹

Given the similarities between section 364.16(2) (which describes a CLEC’s obligation to interconnect, negotiate, and arbitrate) and section 364.16(3) (which describes an ILEC’s obligation to interconnect, negotiate, and arbitrate), the Commission’s *Neutral Tandem Order* should apply with equal force here.

Section 364.01(1) further sets forth the Commission’s broad legislative mandate. It vests in the Commission exclusive jurisdiction “over and in relation to telecommunications

⁸⁰ Docket No. 070408-TP, Order No. PSC-08-0073-FOF-TP (January 30, 2008) (“*Neutral Tandem Order*”).

⁸¹ Neutral Tandem Order, Section II.B.

companies.” A telecommunications company is any entity “offering two-way telecommunications services to the public for hire within this state by the use of a telecommunications facility.”⁸² The term “service” “is to be construed in its broadest and most inclusive sense,”⁸³ and the phrase “telecommunications facility” is defined to include “real estate, easements, apparatus, property, and routes used and operated to provide two-way telecommunications service to the public for hire within the state.”⁸⁴ Finally, the phrase “to the public for hire” means to provide the service to any member of the public in exchange for compensation.⁸⁵

Intrado Comm falls squarely within this definition of a telecommunications company. Intrado Comm is offering a two-way telecommunications service to Florida PSAPs in exchange for compensation. The record is clear that no distinction exists between PSAPs that choose Intrado Comm as their local service provider and any other customer that chooses a CLEC to provide its local exchange services: Intrado Comm will provide the line from the PSAP customer and the line will likely be purchased as a UNE from the incumbent. Indeed, Intrado Comm is seeking interconnection with Embarq to purchase UNE local loops (and other services and facilities) so it can provide its services to its PSAP customers.

In sum, the Commission has exclusive jurisdiction under sections 364.16, 364.161, and 364.162, Florida Statutes, to arbitrate the parties’ disputes — regardless of the

⁸² FLA. STAT. ANN. § 364.02(14).

⁸³ FLA. STAT. ANN. § 364.02(13).

⁸⁴ FLA. STAT. ANN. § 364.02(15).

⁸⁵ *PW Ventures, Inc. v. Nichols*, 533 So.2d 281, 283 (Fla. 1983); Order No. 191367, FPSC Docket No. 871367-TI (July 25, 1988).

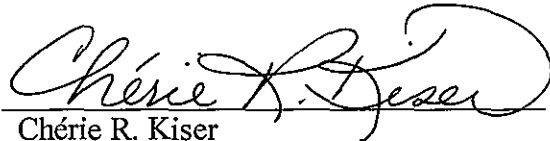
Commission's decision to exercise its jurisdiction under federal law. Intrado Comm properly invoked the Commission's State-law jurisdiction in its petition for arbitration. But the Commission made no attempt to consider Intrado Comm's right to an arbitration proceeding under Florida law. Thus, even if the Commission denies Intrado Comm's motion to reconsider the Order's ruling concerning section 153(47), the Commission must still grant Intrado Comm's motion for reconsideration so the Commission can fulfill its duty to arbitrate the parties' disputes under Florida law.

CONCLUSION

Intrado Comm's motion for reconsideration should be granted and Intrado Comm should be entitled to interconnection under section 251(c) of the Telecommunications Act of 1996 and under sections 364.16, 364.161, and 364.162, Florida Statutes. Thus, the Commission Staff should be directed to promptly prepare a recommendation on the remaining substantive issues that the Commission must resolve.

Respectfully submitted,

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In the Matter of the Petition
of Intrado Communications Inc. for Arbitration
Pursuant to Section 252(b) of the Communications Act
of 1934, as amended, and Section 364.162, Florida
Statutes to Establish an Interconnection Agreement with
Embarq Florida, Inc.

Docket No. 070699-TP

Filed: December 18, 2008

INTRADO COMMUNICATIONS INC.
REQUEST FOR ORAL ARGUMENT

Intrado Communications Inc. (“Intrado Comm”), pursuant to Rules 25-22.0022 and 25-22.060, Florida Administrative Code, respectfully requests that its counsel be granted the opportunity to present oral argument relating to Intrado Comm’s Motion to Reconsider the Commission’s Order No. PSC-08-0799-FOF-TP, issued December 3, 2008 (“Order”).

The Commission recognized that this “is a case of first impression which presents unique circumstances and policy concerns not previously addressed by this Commission.”¹ The Commission further recognized that 911/E911 service “is an essential service in Florida”; that the Commission is “entrusted with protecting the public health, safety, and welfare and must ensure access to basic local service, which includes access to 911/E911 service”; and that “access to 911/E911 must continue uninterrupted regardless of the 911/E911 service provider.”² Despite the importance and novelty of the questions presented in this matter, the Commission has yet to hear any oral argument on the threshold issue. Indeed, the only issue decided in its Order — “whether Intrado Comm’s service offering meets the definition of a ‘telephone exchange service,’ as the term is defined in §3 of the [Communications] Act [of 1934, as

¹ Order at 7.

² *Id.*

amended].”³ Nor has the Commission heard oral argument relating to its obligation to arbitrate the parties’ dispute under Florida law.

Although Intrado Comm’s motion for reconsideration addresses the various points of law and fact that Intrado Comm submits the Commission overlooked or misunderstood, the Commission cannot properly resolve these issues — and discharge its duty to ensure that the public receives the highest quality 911/E911 services — based only on its review of the papers and a motion for reconsideration. Such papers are designed only to “identif[y] a point of fact or law which was overlooked or [to demonstrate that] the Commission failed to consider [such a point of fact or law] in rendering its decision.”⁴ Submitting a brief in support of a motion for reconsideration is no substitute for the opportunity to present oral argument aimed at enhancing the Commission’s understanding of the issues at hand. While the parties’ post-trial briefs did address the threshold issue decided in the Order, it was but one issue in a multi-issue proceeding that considered many issues of interconnection and traffic exchange. Moreover, the presentation of this legal issue was extremely limited due to overall page limitations, and although the Commissioners, Staff, and parties had the opportunity to conduct extensive cross-examination on the factual issues in this docket, they had no opportunity to conduct oral argument on this critical legal issue.

Given the essential nature of 911\E911 services, and the Commission’s acknowledgement that this matter presents an issue of first impression, it is critical that the Commission avail itself of the means necessary to understand the nuances of the services and issues in question. This is particularly true here, because the Commission’s Order does not

³ *Id.* at 2.

⁴ *Stewart Bonded Warehouse v. Bevis*, 294 So.2d 315 (Fla. 1974); *Diamond Cab Co. v. King*, 146 So.2d 889 (Fla. 1962); *Pingree v. Quaintance*, 394 So.2d 161 (Fla. 1st DCA 1981).

address half of the statutory definition of “telephone exchange service” under the federal Act and it altogether failed to consider the Commission’s compulsory arbitration power under Florida law. Section 364.01(1), Florida Statutes, grants this Commission exclusive jurisdiction to consider the matters delegated within Chapter 364, which includes the interconnection and arbitration requirements of sections 364.161 and 364.162. Intrado Comm specifically invoked these provisions as a basis for seeking interconnection and the exchange of traffic, yet no discussion of Florida law appears in the Order, and the parties have not had the opportunity to present oral argument on these issues of Florida law.

It is respectfully submitted that Intrado Comm has demonstrated in its motion for reconsideration that the Commission overlooked critical issues of fact and law and misunderstood the law and facts that it did consider. But given the vital public interests at stake and the novelty of the legal issues in question, the Commission should not forgo the opportunity to engage in a dialogue with the parties and, as a result, develop a deeper understanding of the complex facts and law at the heart of parties’ dispute.

WHEREFORE, Intrado Comm respectfully requests that it be granted oral argument on its motion for reconsideration.

Respectfully submitted,

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A handwritten signature in cursive script, reading "Cherie R. Kiser", written over a horizontal line.

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